

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

RICHARD AUSTIN, an individual, on
behalf of himself, the general public, and
all others similarly situated,

Plaintiff,

vs.

AMAZON.COM, INC., a Delaware
Corporation authorized to do business in
the State of Washington,

Defendant.

Case No. C-09-1679 JLR

**FOURTH JOINT STATUS REPORT AND
RULE 26(f) DISCOVERY PLAN**

Plaintiff Richard Austin (“Plaintiff”) and Defendant Amazon.com, Inc. (“Defendant” or
“Amazon”) submit the following Joint Status Report pursuant to the Court’s *Scheduling Order*.

I. NATURE OF THE CASE

A. Plaintiff’s Claims

1. Plaintiff claims that in general the rounding policy tended to work against

employees and in favor of Amazon. Plaintiff further contends that Amazon required employees to show up for work and clock in before their start of shifts for the benefit of Amazon so that they would be able to attend ‘stand up’ meetings which always took place at the commencement of shifts. Plaintiff further contends that between the time employees clocked in and the start of shifts, Amazon required employees to be available for specific projects which could be assigned to them and commence in this time period.

B. Defendant’s Defenses

Defendant denies any liability for Plaintiff’s claims. Specifically, Defendant denies that it failed to compensate Plaintiff and putative class members for time worked in accordance with the FLSA or applicable Nevada state law. Defendant’s rounding policy provides a convenience for employees who may clock in at their leisure, and results only in a compensation benefit to the employees – employees do not perform any work prior to shift start, so early clock-ins may occur, but work is not performed. However, those who clock in late are paid as if they were on time; they are paid for work they did not do.

Plaintiff has revised his theory of liability and now appears to claim that he occasionally performed work in the few minutes between when he clocked in and when his scheduled shift began. However, electronic data pertaining to Plaintiff’s entrance into the Amazon fulfillment center in which he worked, Plaintiff’s time clock punches and Plaintiff’s productivity data, all of which have been voluntarily produced by Defendant, establish that Plaintiff did not arrive at the fulfillment center and clock-in early enough to have engaged in any productive work the vast majority of the time. If Plaintiff ever did engage in any work-related activity on one or more occasions, Plaintiff was fully compensated for such work over a period of time because he sometimes was paid for time he did not spend working due to the rounding policy or such time was *de minimis* and therefore not compensable. In any case, Plaintiff has not identified any policy or practice of requiring employees to work prior to shift start.

II. STATEMENT OF ADR METHOD

As discussed in previous Joint Status Reports, the Parties have engaged in discussions regarding a possible resolution of this action. However, these discussions have been unsuccessful

1 thus far. Plaintiff filed a Third Amended Complaint on July 28, 2010, which Defendant answered
2 on August 11, 2010.

3 Plaintiff continues to believe that private mediation of the case on a classwide basis would
4 be appropriate. Plaintiff has reviewed plaintiff's clock in records and believes the figure set forth
5 by Amazon below for what it believes to be plaintiff's damages is erroneous.

6 Although Defendant previously believed private mediation was the best ADR method in
7 this case, Defendant now believes that the Parties would most benefit from an Early Neutral
8 Evaluation. Defendant's investigation of Plaintiff's claims, which includes an analysis of the
9 electronic data pertaining to Plaintiff's entrance into the Amazon fulfillment center in which he
10 worked, Plaintiff's time clock punches and Plaintiff's productivity data that Defendant voluntarily
11 produced to Plaintiff, shows that Plaintiff's damages in this case are less than \$200. Defendant
12 asserts that hiring an experienced private mediator at \$5000 or more to discuss a claim for \$200
13 makes no economic sense. Therefore, Defendant requests that the Court order the Parties to
14 participate in Early Neutral Evaluation within the next three (3) months.

15 **III. JOINDER OF ADDITIONAL PARTIES**

16 The parties are not aware of any additional parties to be joined at this time.

17 **IV. DISCOVERY**

18 **A. FRCP 26(f) Conference and FRCP 26(a) Initial Disclosures**

19 The parties participated in a telephone conference pursuant to Fed. R. Civ. P. 26(f) on
20 February 25, 2010 and on May 13, 2010. As discussed in previous Joint Status Reports, the
21 Parties had been engaged in discussions regarding a possible resolution of this action. As part of
22 these discussions, Defendant voluntarily produced electronic data pertaining to Plaintiff's entry
23 into the Amazon fulfillment center in which he worked, Plaintiff's time clock punches and
24 Plaintiff's productivity. Unfortunately, these discussions have been unsuccessful. Plaintiff filed a
25 Third Amended Complaint on July 28, 2010, which Defendant answered on August 11, 2010.
26 The Parties propose exchanging Rule 26(a) initial disclosures by September 10, 2010.

27 **B. Subject of Discovery**

28 Plaintiff anticipates seeking discovery on Defendant's payroll and timekeeping policies
FOURTH JOINT STATUS REPORT AND
RULE 26(f) DISCOVERY PLAN
Case No. C-09-1679 JLR

1 and electronic records. Defendant has voluntarily produced electronic data pertaining to
 2 Plaintiff's entry into the Amazon fulfillment center in which he worked, Plaintiff's time clock
 3 punches and Plaintiff's productivity data and asserts that no other electronic records are relevant
 4 or discoverable at this time. Defendant anticipates seeking discovery regarding the basis of
 5 Plaintiff's claims, including information Plaintiff has obtained from putative class members or
 6 other sources.

7 **C. Changes to Discovery Limitations**

8 The parties do not, at this time, propose any additional changes to the limitations on
 9 discovery imposed under the Federal Rules of Civil Procedure.

10 **D. Expense Management**

11 The parties are agreeable to exchanging some documents pertaining to Plaintiff
 12 informally. Defendant proposes focusing discovery on the viability of Plaintiff's individual
 13 claims and issues relevant to collective certification prior to the adjudication of any collective
 14 notice motion. To this end, Defendant has voluntarily produced electronic data pertaining to
 15 Plaintiff's entry into the Amazon fulfillment center in which he worked, Plaintiff's time clock
 16 punches and Plaintiff's productivity and asserts that no other electronic records are relevant or
 17 discoverable at this time. Defendant also submits that issues in this case must be narrowed first
 18 by a dispositive motion for summary judgment. Defendant believes that the electronic data which
 19 it has voluntarily produced provides a basis on which to dispose of one or all of Plaintiff's
 20 theories and claims.

21 **E. Orders**

22 The parties do not propose that the Court enter any other orders under Fed. R. Civ. P 26(c)
 23 or under Local Rule CR 16(b) and (c).

24 **V. REFERRAL TO MAGISTRATE JUDGE**

25 The parties do not consent to the assignment of this case to a full-time Magistrate Judge.

26 **VI. BIFURCATION**

27 Defendant asserts that discovery should be bifurcated. Specifically, unless this action is
 28 certified, discovery should be focused on the merits of Plaintiff's individual claim and on issues

relevant to the collective action allegations.

VII. PRE-TRIAL STATEMENTS

The parties assert that determining the necessity of pretrial statements and pretrial orders is premature at this time. The parties will be better able to assess this issue after conducting discovery and engaging in private mediation.

VIII. SUGGESTIONS FOR SHORTENING/SIMPLIFYING CASE

Defendant submits that issues in this case must be narrowed first by a dispositive motion for summary judgment. Defendant believes that the electronic data which it has voluntarily produced provides a basis on which to dispose of one or all of Plaintiff's theories and claims.

A. Estimate of Trial Date

The parties cannot anticipate at this early stage when this case will be ready for trial.

B. Demand for Jury Trial

Plaintiff seeks a non-jury trial.

C. Estimate of Trial Time

The parties cannot anticipate at this early stage the number of trial days needed to adjudicate the issues in this case.

IX. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF TRIAL COUNSEL

A complete list of counsel representing the parties are provided below.

X. SERVICE OF PARTIES

All defendants have been served.

XI. SCHEDULING CONFERENCE

Defendant believes that the Parties and Court may benefit from attending a scheduling conference before the Court enters a scheduling order in this case.

Dated: August 13, 2010

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By /s/ Theresa Mak
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CERTIFICATE OF SERVICE

I hereby certify that on this date I served true and correct copies of the foregoing document(s) on parties and their counsel of record, in the manner indicated:

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Dated this 13th day of August, 2010

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